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05 UNITED STATES DISTRICT COURT
06 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

07 JEANETTE LOUISE LANE,) CASE NO. C13-5658-MJP-MAT
08 Plaintiff,)
09 v.) REPORT AND RECOMMENDATION
10 CAROLYN W. COLVIN, Acting) RE: SOCIAL SECURITY DISABILITY
Commissioner of Social Security,) APPEAL
11 Defendant.)
12 _____)

13 Plaintiff Jeanette Louise Lane proceeds through counsel in her appeal of a final decision
14 of the Commissioner of the Social Security Administration (Commissioner). The
15 Commissioner denied plaintiff's applications for Disability Insurance Benefits (DIB) and
16 Supplemental Security Income (SSI) after a hearing before an Administrative Law Judge
17 (ALJ). Having considered the ALJ's decision, the administrative record (AR), and all
18 memoranda of record, the Court recommends that this matter be AFFIRMED.

19 **FACTS AND PROCEDURAL HISTORY**

20 Plaintiff was born on XXXX, 1960.¹ She has a high school degree and studied
21 _____

22 ¹ Plaintiff's date of birth is redacted back to the year of birth in accordance with Federal Rule of Civil Procedure 5.2(a) and the General Order of the Court regarding Public Access to Electronic Case

01 computer science at Evergreen State College. (AR 48.) She has past relevant work as a
02 general house worker, customer service representative, door-to-door sales representative, office
03 helper, nurse assistant, fast food service manager, residential leasing agent, all-around logger,
04 announcer, and access coordinator for cable television.

05 Plaintiff filed applications for DIB, SSI, and disabled widow's benefits on March 22,
06 2010, alleging disability beginning June 29, 2009. She is insured for DIB through June 30,
07 2012. Plaintiff's applications were denied at the initial level and on reconsideration, and she
08 timely requested a hearing.

09 On March 15, 2012, ALJ David Johnson held a hearing, taking testimony from plaintiff
10 and a vocational expert. (AR 42-93.) On April 20, 2012, the ALJ issued a decision finding
11 plaintiff not disabled from June 29, 2009 through the present. (AR 21-34.)

12 Plaintiff timely appealed. The Appeals Council denied plaintiff's request for review
13 on June 7, 2013 (AR 1-6), making the ALJ's decision the final decision of the Commissioner.
14 Plaintiff appealed this final decision of the Commissioner to this Court.

15 **JURISDICTION**

16 The Court has jurisdiction to review the ALJ's decision pursuant to 42 U.S.C. § 405(g).

17 **DISCUSSION**

18 The Commissioner follows a five-step sequential evaluation process for determining
19 whether a claimant is disabled. *See* 20 C.F.R. §§ 404.1520, 416.920 (2000). At step one, it
20 must be determined whether the claimant is gainfully employed. The ALJ found plaintiff had

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01 not engaged in substantial gainful activity since the alleged onset date of June 29, 2009.² At
02 step two, it must be determined whether a claimant suffers from a severe impairment. The
03 ALJ found plaintiff's depressive disorder, personality disorder, posttraumatic stress disorder,
04 fibromyalgia, chronic atrophic vaginitis, obesity, and hypertension severe. Step three asks
05 whether a claimant's impairments meet or equal a listed impairment. The ALJ found that
06 plaintiff's impairments did not meet or equal the criteria of a listed impairment.

07 If a claimant's impairments do not meet or equal a listing, the Commissioner must
08 assess residual functional capacity (RFC) and determine at step four whether the claimant has
09 demonstrated an inability to perform past relevant work. The ALJ found plaintiff able to
10 perform light work as defined in 20 C.F.R. §§ 404.1567(b) and 416.967(b), with a limitation to
11 occasionally climb, stoop, crouch or crawl. Plaintiff can perform work that does not require
12 concentrated exposure to extreme cold, vibration or hazards such as open machinery or
13 unprotected heights. She can perform simple tasks that do not require more than superficial
14 interaction with the public or coworkers. She can perform work in a structured environment
15 that does not require the exercise of more than rudimentary judgment. With that assessment,
16 the ALJ found plaintiff unable to perform her past relevant work.

17 If a claimant demonstrates an inability to perform past relevant work, the burden shifts
18 to the Commissioner to demonstrate at step five that the claimant retains the capacity to make
19 an adjustment to work that exists in significant levels in the national economy. With the
20 assistance of a vocational expert, the ALJ found plaintiff capable of performing other jobs, such

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22 ² Previously, it was found that the plaintiff was the unmarried widow of deceased insured
worker William Merrill Oleary, had attained the age of fifty, and met the non-disability requirements for
disabled widow's benefits set forth in Section 202(e) of the Social Security Act. (AR 24.)

01 as housekeeping cleaner, garment folder, and parts cleaner, and, therefore, not disabled.

02 This Court's review of the ALJ's decision is limited to whether the decision is in
03 accordance with the law and the findings supported by substantial evidence in the record as a
04 whole. *See Penny v. Sullivan*, 2 F.3d 953, 956 (9th Cir. 1993). Substantial evidence means
05 more than a scintilla, but less than a preponderance; it means such relevant evidence as a
06 reasonable mind might accept as adequate to support a conclusion. *Magallanes v. Bowen*, 881
07 F.2d 747, 750 (9th Cir. 1989). If there is more than one rational interpretation, one of which
08 supports the ALJ's decision, the Court must uphold that decision. *Thomas v. Barnhart*, 278
09 F.3d 947, 954 (9th Cir. 2002).

10 Plaintiff argues the ALJ erroneously evaluated some of the medical opinion evidence,
11 and gave insufficient reasons to reject her subjective claims. Therefore, plaintiff argues,
12 substantial evidence did not support the ALJ's RFC assessment. She requests remand for an
13 award of benefits or, alternatively, for further administrative proceedings. The Commissioner
14 argues that the ALJ's decision is supported by substantial evidence and should be affirmed.

15 Medical Opinions

16 In general, more weight should be given to the opinion of a treating physician than to a
17 non-treating physician, and more weight to the opinion of an examining physician than to a
18 non-examining physician. *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1996). Where not
19 contradicted by another physician, a treating or examining physician's opinion may be rejected
20 only for "clear and convincing" reasons. *Id.* (quoting *Baxter v. Sullivan*, 923 F.2d 1391,
21 1396 (9th Cir. 1991)). Where contradicted, a treating or examining physician's opinion may
22 not be rejected without "specific and legitimate reasons" supported by substantial evidence in

01 the record for so doing.” *Id.* at 830-31 (quoting *Murray v. Heckler*, 722 F.2d 499, 502 (9th Cir.
02 1983)). The ALJ may reject physicians’ opinions “by setting out a detailed and thorough
03 summary of the facts and conflicting clinical evidence, stating his interpretation thereof, and
04 making findings.” *Reddick v. Chater*, 157 F.3d 715, 725 (9th Cir. 1998) (citing *Magallanes*,
05 881 F.2d at 751). Rather than merely stating her conclusions, the ALJ “must set forth [her]
06 own interpretations and explain why they, rather than the doctors’, are correct.” *Id.* (citing
07 *Embrey v. Bowen*, 849 F.2d 418, 421-22 (9th Cir. 1988)).

08 A. Kristine Harrison, Psy.D.

09 Dr. Harrison conducted a psychological evaluation on January 18, 2010. (AR 300-09.)
10 The ALJ gave “significant weight” to Dr. Harrison’s opinion that plaintiff “should look for a
11 position in which she can work alone as opposed to working with a team [and] may do best with
12 clear and consistent supervision as well as clear expectations.” (AR 32, 309.) The ALJ found
13 Dr. Harrison’s opinions to be “provided after a thorough evaluation of the claimant’s abilities
14 [and] consistent with the plaintiff’s performance during the evaluation as well as the
15 evaluations with Dr. Wingate and Dr. Neims.” (*Id.*)

16 Plaintiff argues the ALJ erred in the consideration of Dr. Harrison’s opinions. Plaintiff
17 references another comment by Dr. Harrison that plaintiff “may do best with clear and
18 consistent supervision that could assist her in limiting or preventing unusual interpretations of
19 material and by identifying rewards and consequences for specific behaviors.” (AR 309.)
20 She argues the ALJ rejected this opinion *sub silentio* by neither adopting it, nor specifically
21 rejecting it.

22 However, the Court finds no error in the ALJ’s consideration of Dr. Harrison’s

01 opinions. While plaintiff paraphrases Dr. Harrison's opinion as requiring "interventionist
02 supervision to limit and prevent Plaintiff's observed tendency to overlay disruptive
03 interpretations on reality" (Dkt. 17 at 6), in fact, Dr. Harrison's opinions, stated in the
04 "Recommendations" section of the report, were less emphatic:

05 Ms. Lane might want to consider work in which she can work alone as opposed
06 to being part of a close knit team. She may do best with clear and consistent
07 supervision that could assist her in limiting or preventing unusual interpretations
08 of material and by identifying rewards and consequences for specific behaviors.
09 Clear expectations may also be helpful to Ms. Lane.

08 (AR 309.)

09 Considering Dr. Harrison's opinions, the ALJ noted the psychologist's observation that
10 plaintiff was cooperative and persistent with all the assessment tasks, was able to compose
11 herself when she became tearful, was alert and oriented, and had adequate immediate memory,
12 attention, and concentration. (AR 28.) Plaintiff possessed an adequate fund of knowledge,
13 was able to perform abstract reasoning and adequately interpret proverbs, and had average
14 cognitive capacity. (*Id.*) Her judgment and reasoning varied and, while she held
15 non-mainstream, unusual beliefs, her reality testing appeared good and her thought process was
16 coherent. (*Id.*) Citing, *inter alia*, Dr. Harrison's opinion that plaintiff should look for a
17 position in which she could work alone as opposed to working with a team and have clear and
18 consistent supervision as well as clear expectations (AR 32), the ALJ restricted plaintiff to
19 "simple tasks that do not require more than superficial interaction with the public or coworkers
20 ... in a structured environment that does not require the exercise of more than rudimentary
21 judgment." (AR 26.)

22 There is no requirement that an ALJ's RFC directly correspond with a specific medical

01 opinion on the functional capacity in question. *Chapo v. Astrue*, 682 F.3d 1285, 1288 (10th
02 Cir. 2012). Indeed, the “final responsibility” for deciding issues such as an individual’s RFC
03 “is reserved to the Commissioner.” Social Security Ruling (SSR) 96-5p. Furthermore, Dr.
04 Harrison specifically provided her opinion in the form of a “Recommendation” (*see* AR 308),
05 rather than “an imperative.” *See Carmickle v. Comm’r Soc. Sec.*, 533 F.3d 1155, 1165 (9th
06 Cir. 2008) (finding reasonable the ALJ’s reliance on opinions provided as specific statements
07 about functional abilities rather than an opinion provided in the form of a recommendation). *See*
08 *also Valentine v. Comm’r Soc. Sec.*, 574 F.3d 685, 691-92 (9th Cir. 2009) (finding the ALJ did
09 not err by omitting from the RFC finding the opinion of a doctor set forth in the
10 “Recommendations” section of his report). The Court finds legally sufficient the ALJ’s
11 consideration of Dr. Harrison’s opinions.

12 B. Jack T. Norris, Ph.D.

13 Dr. Norris conducted a psychological evaluation on January 25, 2011. (AR 1199-
14 1210.) Plaintiff argues the ALJ erred in evaluating Dr. Norris’ opinions. Specifically,
15 plaintiff points to the lack of discussion of the Global Assessment of Functioning (GAF) score
16 of 45 assigned by Dr. Norris. Somewhat obliquely, plaintiff also seems to argue the ALJ erred
17 by failing to adopt all of the functional limitations opined by Dr. Norris.

18 The GAF score is a “rough estimate” of an individual’s psychological, social and
19 occupational functioning, and is used to assess the need for treatment. *Vargas v. Lambert*, 159
20 F.3d 1161, 1164 n.2 (9th Cir. 1998). It is not an appropriate methodology, and was not
21 designed to be so, for assessing the severity of a mental impairment or assessing RFC in the
22 context of adjudicating disability. The previous version of the Diagnostic and Statistical

01 Manual of Mental Disorders (DSM) designated a GAF score between 41 to 50 as describing
02 “serious symptoms” or “any serious impairment in social, occupational, or school functioning.”
03 DSM-IV 34 (4th ed. 2000). The current version of the DSM does not include a GAF rating
04 for assessment of mental disorders. DSM-V 16-17 (5th ed. 2013).

05 The Administrative Message pointed to by plaintiff indicates the SSA will continue to
06 receive and consider GAF scores, and will consider a score as opinion evidence “when it comes
07 from an acceptable medical source[.]” AM-13066. It also clarifies:

08 However, as with other opinion evidence, a GAF needs supporting evidence to
09 be given much weight. By itself, the GAF cannot be used to “raise” or “lower”
10 someone’s level of function. The GAF is only a snapshot opinion about the level
11 of functioning. It is one opinion that we consider with all the evidence about a
12 person’s functioning. Unless the clinician clearly explains the reasons behind
13 his or her GAF rating, and the period to which the rating applies, it does not
14 provide a reliable longitudinal picture of the claimant’s mental functioning for a
15 disability analysis.

12 *Id.*

13 Indeed, the previous version of the DSM specifically provided that the GAF assessment
14 is made based on either the individual’s symptoms or her functional impairments, whichever is
15 lower. DSM-IV-TR at 32-33 (emphasis added). The Commissioner has determined the GAF
16 scale “does not have a direct correlation to the severity requirements in [the Social Security
17 Administration’s] mental disorders listings.” 65 Fed. Reg. 50,746, 50,765-766 (Aug. 21,
18 2000). The Court, for all of these reasons, finds no error in relation to the ALJ’s failure to
19 mention the GAF score assessed by Dr. Norris.

20 As to the functional limitations set forth in Dr. Norris’ report, plaintiff’s argument
21 overemphasizes the checkmark designations of the degree of severity of the functional
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01 limitations outside of the context of the doctor's narrative comments and observations.³ So,
02 for example, while Dr. Norris checked the box for "marked" limitations on plaintiff's "ability to
03 be aware of normal hazards and take appropriate precautions," the comments which follow
04 explain the basis of that assessment—the doctor's opinion that multiple sources of internal and
05 external distractions were likely to cause plaintiff "to have suboptimal awareness of some types
06 of environmental hazards." (AR 1202.) Commensurately, the ALJ adopted a limitation on
07 plaintiff's ability to perform work requiring concentrated exposure to cold, vibration, or
08 hazards such as open machinery or unprotected heights. (AR 26.)

09 Similarly, while Dr. Norris checked the box for "marked" and "moderate" limitations
10 on plaintiff's "ability to communicate and perform effectively in a work setting with public
11 contact" and in a work setting with limited public contact, respectively, his narrative
12 observations identified low self-confidence and easy distractibility as the source of the
13 problem. The ALJ limited plaintiff to the performance of simple tasks "that do not require
14 more than superficial interaction with the public or coworkers." (*Id.*) Rather than rejecting
15 Dr. Norris' opinion "*sub silentio*," as plaintiff argues, the ALJ reasonably accommodated the
16 difficulties identified by Dr. Norris.

17 C. Brett Trowbridge, Ph.D.

18 Plaintiff's assignment of error regarding the ALJ's consideration of the opinions of Dr.
19 Trowbridge rests on similar grounds. Plaintiff argues the ALJ erred by rejecting the GAF
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21 ³ See Program Operations Manual System (POMS) DI 25020.010 at B.1 (ALJ should use
22 narrative portion of Mental RFC Assessment form, not checkbox portion of form, in assessing RFC).
See also *Murray v. Heckler*, 722 F.2d 499, 501 (9th Cir. 1983) (expressing preference for individualized
medical opinions over check-off reports).

01 score of 50 assigned by Dr. Trowbridge. She also argues the ALJ failed to include a limitation
02 in maintaining appropriate behavior in a work setting. As with her arguments regarding Dr.
03 Norris, plaintiff contends Dr. Trowbridge's limitation would require an "intervening
04 supervisor" to "limit and prevent her from 'unusual interpretations of material.'" (Dkt. 17 at 9.)

05 As with the assignment of error regarding Dr. Norris, plaintiff fails to show the GAF
06 score of 50 constituted significant probative evidence. *See Vincent v. Heckler*, 739 F.2d 1393,
07 1394-95 (9th Cir. 1984) (the ALJ need not discuss each piece of evidence in the record, but
08 must explain why 'significant probative evidence has been rejected.'") (quoting *Cotter v.*
09 *Harris*, 642 F.2d 700, 706 (3d Cir. 1981)). The ALJ reasonably declined to give the score any
10 weight, finding it to be not evident what specifically was being rated, overly reliant on
11 plaintiff's less than credible subjective complaints, and not conveying information that furthers
12 the work-related functional analysis. (AR 30.)

13 Plaintiff also argues the ALJ erred by failing to adopt a "limitation to maintaining
14 appropriate behavior in a work setting" (Dkt. 17 at 8), referring to Dr. Trowbridge's
15 check-mark indication of a "marked" limitation on plaintiff's ability to "maintain appropriate
16 behavior in a work setting." (AR 1282.) Dr. Trowbridge's comments link that factor to his
17 observation of plaintiff as "anxious and depressed". (*Id.*) The ALJ acknowledged Dr.
18 Trowbridge's opinion in this regard, limiting plaintiff to the performance of simple tasks
19 performed without more than superficial contact with the public or coworkers, and working in a
20 structured environment not requiring the exercise of more than rudimentary judgment. (AR
21 29, 32).

22 In sum, the Court finds no error in the ALJ's consideration of the opinions of Dr.

01 Harrison, Dr. Norris, or Dr. Trowbridge.

02 Credibility

03 Absent evidence of malingering, an ALJ must provide clear and convincing reasons to
04 reject a claimant's testimony. *Lingenfelter v. Astrue*, 504 F.3d 1028, 1036 (9th Cir. 2007)
05 (quoting *Bunnell v. Sullivan*, 947 F.2d 341, 344 (9th Cir. 1991)). *See also Vertigan v. Halter*,
06 260 F.3d 1044, 1049 (9th Cir. 2001). "General findings are insufficient; rather, the ALJ must
07 identify what testimony is not credible and what evidence undermines the claimant's
08 complaints." *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1996). "In weighing a claimant's
09 credibility, the ALJ may consider his reputation for truthfulness, inconsistencies either in his
10 testimony or between his testimony and his conduct, his daily activities, his work record, and
11 testimony from physicians and third parties concerning the nature, severity, and effect of the
12 symptoms of which he complains." *Light v. Social Sec. Admin.*, 119 F.3d 789, 792 (9th Cir.
13 1997).

14 Here, the ALJ found plaintiff's subjective complaints regarding the intensity,
15 persistence, and limiting effects of her physical and mental impairments not entirely credible.
16 Plaintiff does not challenge the ALJ's assessment of her physical complaints, but argues the
17 ALJ gave insufficient reasons to reject her reported mental problems and limitations.
18 However, plaintiff's contention is entirely derivative of her arguments regarding the ALJ's
19 failure to adopt limitations opined by Drs. Harrison, Norris, and Trowbridge. Finding no error
20 in the ALJ's evaluation of those opinions, the Court finds further consideration of the ALJ's
21 credibility assessment unnecessary.

22 ///

CONCLUSION

For the reasons set forth above, this matter should be AFFIRMED.

DATED this 5th day of March, 2014.

A handwritten signature in black ink, appearing to read "Mary Alice Theiler", written over a horizontal line.

Mary Alice Theiler
Chief United States Magistrate Judge